





CITY PARCEL SITE
FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street • Spokane, Washington 99205-1295 • (509) 329-3400

December 15, 2004

Mr. Richard E. Raymond
Principal Engineer
Public Works & Utilities
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3334

Dear Mr. Raymond:

RE: City Parcel Site - City Fuel/Wash Facility, former Barrier Property

In your letter dated December 10, 2004, you provided Ecology with the results of additional soil sampling for PCBs conducted on the City Fuel/Wash Facility (former Barrier property). Based on our review of the results, Ecology agrees that the PCB contamination in the former Barrier property is limited to the area adjacent to the alleyway as determined in earlier studies. PCB concentrations in this area have been shown to be below the industrial PCB soil cleanup level of 10 mg/Kg.

Your letter also requests approval for soils excavated in the PCB-contaminated area to be re-incorporated below grade at a location within the existing contamination area which will be capped with a cement concrete pavement. The volume of these excavated soils from installation of luminary foundation bases and fence posts is estimated to be on the order of a few cubic yards. Based on our telephone conversation on December 14, 2004, it is Ecology's understanding that clean soils will be placed on top of these relocated soils prior to capping. Ecology approves your proposal with the following contingencies:

- The City shall send documentation to Ecology as to the total volume, exact location (shown on a map), and depth of the relocated excavated soils as soon as the project is completed.
- Also, upon completion of the project, a Restrictive Covenant that prohibits activities that interfere with the integrity of the concrete pavement and to warn future property owners of the residual contamination shall be recorded for the contaminated area.

This approval does not relieve the City of Spokane of its obligations to comply with all other federal, state, and local requirements.

Mr. Richard E. Raym

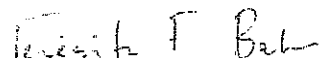
December 15, 2004

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Ecology will be drafting the Restrictive Covenant for the above property very soon. Please provide, at the soonest time possible, the legal description and an accompanying map for the property that would be placed under deed restrictions.

If you have any questions, please call me at (509) 329-3543.

Sincerely,



Teresita F. Bala

Toxics Cleanup Program



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street • Spokane, Washington 99205-1295 • (509) 456-2926

COPY

August 7, 2003

Mr. Jack Lynch
City Administrator
City of Spokane
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3333

Dear Mr. Lynch:

RE: City Parcel Cleanup Site

The Department of Ecology met with Mr. Lloyd Brewer and Mr. Dick Raymond of the City of Spokane on July 31, 2003, to discuss the proposed development of the former Barrier property that is adjacent to the alleyway (a City Right-of-Way) at the City Parcel Toxic Cleanup Site.

The City Parcel Site, a former transformer repair and recycling operation facility, is located at 708 North Cook Street at the intersection of North Cook and East Springfield Avenue. The Department of Ecology has completed the Remedial Investigation at the City Parcel Site that is undergoing cleanup under the Model Toxics Control Act (MTCA), RCW 70.105D RCW. The Remedial Investigation is the study that determines the nature and extent of contamination at the Site.

Ecology's next step in the cleanup is to prepare a Feasibility Study and then a Draft Cleanup Action Plan. The Feasibility Study will evaluate different cleanup alternatives that are applicable to the Site. The Draft Cleanup Action Plan will present Ecology's selected cleanup action. The evaluation of the different alternatives and the selection of the cleanup action will be conducted according to the criteria required under MTCA. The public will have an opportunity to review and comment on the draft Feasibility Study Report and the Draft Cleanup Action Plan. Implementation of the cleanup action will follow; the schedule will depend on negotiations with the Potentially Liable Persons and/or availability of state funds.

The presence of PCBs on surface soils along the alleyway that is located just east of the City Parcel building was confirmed in the Remedial Investigation. Enclosed are two maps showing historic and recent soil sample results for the Site. This alleyway has unlimited access to the public and, therefore, continues to be an exposure pathway to PCBs. It is Ecology's intention to eliminate this exposure pathway as soon as possible.

Mr. Jack Lynch
August 7, 2003
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During the meeting with Mr. Brewer and Mr. Raymond, the possibility of providing a temporary cover over the contaminated soils was discussed.

This letter is Ecology's formal request for the City to install a temporary cover over the contaminated soils in the alleyway. We would appreciate it if the City can inform us of its intentions by September 15, 2003. Ecology is also sending a letter to Mr. Gisselberg, the City Parcel property owner, to see if he is willing to participate in this project. We encourage discussions between the City and Mr. Gisselberg to install temporary measures to eliminate the exposure to PCB contamination in the alleyway.

Thank you for your cooperation. We look forward to working with you. If you have any questions, I can be reached at 329-3543.

Sincerely,

Teresita Bala
Teresita Bala
Toxics Cleanup Program

Cc: Roger Flint, City of Spokane
Lloyd Brewer, City of Spokane
Dick Raymond, City of Spokane
Flora Goldstein, Ecology
Colleen Warren, AAG/Olympia



FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street • Spokane, Washington 99205-1295 • (509) 456-2926

September 4, 2003

Mr. Jack Lynch
City Administrator
Spokane City Hall
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3303

Dear Mr. Lynch:

RE: City Parcel Site Alleyway

Ecology has received your August 19, 2003 letter responding to our formal request, per our letter dated August 7, 2003, to install a temporary cover over the PCB-contaminated soils in the City Parcel Site alleyway. The letter states that the City is prepared to place a light granular base to level the alleyway and then pave the surface with asphalt. This letter is to inform the City that Ecology agrees with the proposal. We would appreciate it if you can keep us informed as to the schedule of the work that will take place.

Your cooperation to our request is very much appreciated. We look forward to continuing working with you. If you have any questions, please feel free to call Teresita Bala at (509) 329-3543.

Sincerely,

Flora J. Goldstein
Section Manager
Toxics Cleanup Program
Eastern Regional Office

cc: Roger Flint, City of Spokane
Lloyd Brewer, City of Spokane
Dick Raymond, City of Spokane
Teresita Bala, Ecology/Spokane
Colleen Warren, AAG/Olympia

Ecology's Responses to Comments submitted by Mr. Robert Dunn (Attorney for Mr. Gisselberg) received on September 13, 2005

[Note: Mr. Gisselberg is the current owner and a party to the Enforcement Order. Mr. Dunn, acting as Mr. Gisselberg's attorney, submitted comments to Ecology on behalf of Mr. Gisselberg. These comments and responses are a subset and extension of an assemblage of correspondence between counsel for Mr. Gisselberg and Ecology, which are available for review.]

1.a. The Fact Sheet on the Enforcement Order states that "The City Parcel owners each declined to conduct work voluntarily or did not respond to Ecology's request to negotiate an Agreed Order or Consent Decree to implement the final Cleanup Action Plan". "The City Parcel owners" in this statement refers to the Site's previous owners and the current owner. This statement is accurate. Mr. Gisselberg, as with Mr. Boyce, declined to conduct work voluntarily by not agreeing to negotiate an Agreed Order or Consent Decree; Mr. Overton did not respond to Ecology's request. The details, as described in statement no. 26 of Section II, Statement of Facts, of the Enforcement Order are:

"On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent letters to the PLPs asking their intention to negotiate an Agreed Order or Consent Decree with Ecology to implement the FCAP (as written or with some specific modifications as discussed during the May 24, 2005 meeting). Ecology requested that the PLPs respond to Ecology's letter by July 27, 2005. Mr. Boyce, through his attorney Mr. Todd Reuter, responded that he did not intend to cooperate in the form of payment for any portion of the cleanup costs. A response was also received by Ecology from Mr. Gisselberg's attorney, Mr. Robert Dunn, electing not to negotiate an Agreed Order or Consent Decree with Ecology for implementation of either the FCAP, or the FCAP with specific modifications that would allow the building on Site to remain. Mr. Overton did not send a response."

1.b. A groundwater sample from Monitoring Well (MW)-1 in 1997 showed PCBs at 2.88 parts per billion (ppb). A follow-up sampling event in January 1998 did not detect PCBs in groundwater. Statement no. 10 of Section II, Statement of Facts, describes these sampling events in detail including the explanation that the presence of PCBs in the groundwater was due to high turbidity. When read in proper context, the following statements in the Fact Sheet are correct and are not deceiving and misleading: "A groundwater sample taken in 1997 showed PCBs above acceptable state levels. Follow-up sampling had not detected PCBs in groundwater".

PCBs were again detected at 1.88 ppb in MW-1 during the Remedial Investigation (RI) in April 2002. The presence of the PCBs in MW-1 may have been caused by nearby soil activities during the RI that possibly disturbed the soil column or influenced movement of contaminants. Very low levels of PCBs were also found in two other newly-installed

monitoring wells in April 2002. Follow-up sampling events in July 2002, February 2003, and May 2003 did not detect PCBs in groundwater in all monitoring wells.

Ecology will be revising statement no 18 of Section II, Statement of Facts, to more precisely reflect the groundwater sampling undertaken in 2002 and 2003.

2 and 3. In *City Parcel, Inc. et. al v. Overton*, Spokane County Superior Court No. 94-2-06779-1, the Court concluded that Mr. Gisselberg prior to purchasing the property "... had knowledge or reason to know that in the past hazardous substances, the release or threatened release of which resulted or contributed to the need for remedial action, were released or disposed of on, in, or at the facility." The Findings of Fact and Conclusions of Law entered by Judge Thompkins in this case do not support a defense of "innocent purchaser" as provided for in RCW 70.105D.040(3)(b). Nor did the court rule that Mr. Gisselberg was immune from liability under RCW 70.105D.040(3)(a)(iii). To the contrary, the court found Mr. Gisselberg liable under MTCA for cleanup costs at this site. Furthermore, Ecology has no responsibility to notify prospective purchasers of property of potential contamination; instead the Model Toxics Control Act (MTCA) places responsibility for due diligence on prospective purchasers.

4. In *City Parcel, Inc. et. al. v. Overton*, Spokane County Superior Court No. 94-2-06779-1, the Court already decided that Mr. Gisselberg, along with Mr. Boyce and Mr. Overton are the Potentially Liable Persons (PLPs) for the City Parcel Site. Ecology's Enforcement Order does not target Mr. Gisselberg; it is instead being issued to all three jointly and severally liable PLPs. The Court made no finding as to the liability of certain transformer generators delivered to the Site prior to Mr. Gisselberg's purchase of the property. Additionally, MTCA does not impose on Ecology a duty to investigate and identify possible generators of the hazardous substances that were released at the Site. MTCA's joint and several liability specifically allows Ecology to name readily identifiable parties, require them to conduct the cleanup, and let them pursue other potentially liable parties from whom they can seek contribution after the cleanup is complete.

5. The gravel cover that the City installed in the alleyway is only a temporary cover and is not the appropriate final remedy. The Final Cleanup Action Plan (FCAP) requires the excavation and disposal of PCB-contaminated soils in the alleyway because the PCB concentrations are above the cleanup level allowed by the state of Washington. This is the same cleanup action required for the parking lot behind the building. Soil concentrations of PCBs in the former Barrier property (now owned by the City) are below the industrial PCB cleanup level. The FCAP requires the installation of a protective cap and a recorded Restrictive Covenant for this City property. The City has already installed this protective cap. Additionally, the Enforcement Order is not issued only to Mr. Gisselberg. It is being issued to all PLPs.

6. Consistent with response #4, Ecology does not intend to pursue other PLPs. The Final Cleanup Action Plan will not be amended and the Enforcement Order, as revised, is now final. It is in the public interest to move forward with cleanup.